

1 AN ACT
2 RELATING TO LONG-TERM CARE; AMENDING SECTIONS OF THE LONG-
3 TERM CARE OMBUDSMAN ACT PERTAINING TO ACCESS TO RECORDS.
4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 Section 1. Section 28-17-13 NMSA 1978 (being Laws
7 1989, Chapter 208, Section 13, as amended) is amended to
8 read:

9 "28-17-13. ACCESS TO RECORDS OF PATIENTS, RESIDENTS OR
10 CLIENTS. --

11 A. In order for the office to carry out its
12 responsibilities, including conducting investigations, under
13 the Long-Term Care Ombudsman Act, the office shall have full
14 and immediate access to readily available medical, personal,
15 financial and other nonmedical records, which include
16 administrative records, policies, procedures or documents
17 that concern, involve or pertain to a resident's diet,
18 comfort, health, safety or welfare, but do not include
19 internal quality assurance and risk management reports, of a
20 patient, resident or client of a long-term care facility
21 that are retained by the facility or the facility's parent
22 corporation or owner. If the records are not readily
23 available, they are to be provided to the office within
24 twenty-four hours of the request. If the patient, resident
25 or client:

1 (1) has the ability to consent in writing,
2 access may only be obtained by the written consent of the
3 patient, resident or client;

4 (2) is unable to consent in writing, oral
5 consent may be given in the presence of a third party as
6 witness;

7 (3) has a legally appointed surrogate
8 decision maker authorized to approve review of records, the
9 office shall obtain the permission of the surrogate decision
10 maker for review of the records, unless any of the following
11 apply:

12 (a) the existence of the surrogate
13 decision maker is unknown to the office or the facility;

14 (b) the surrogate decision maker
15 cannot be reached within five working days;

16 (c) access to the records is necessary
17 to investigate or evaluate a complaint; or

18 (d) the surrogate decision maker
19 refuses to give the permission and a representative of the
20 office has reasonable cause to believe that the surrogate
21 decision maker is not following the wishes of the resident;
22 and

23 (4) is unable to express written or oral
24 consent and there is no surrogate decision maker or the
25 notification of the surrogate decision maker is not

1 applicable for reasons set forth in Paragraph (3) of this
2 subsection or the patient, resident or client is deceased,
3 inspection of records may be made by employees of the
4 office, ombudsman coordinators and by ombudsmen approved by
5 the ombudsman coordinator or the state ombudsman.

6 B. Copies of records may be reproduced by the
7 office. If investigation of records is sought pursuant to
8 this section, the ombudsman shall upon request produce a
9 statement signed by the ombudsman coordinator or state
10 ombudsman authorizing the ombudsman to review the records.
11 Facilities providing copies of records pursuant to this
12 section may charge the office for the actual copying cost
13 for each page copied.

14 C. Upon request by the office, a long-term care
15 facility shall provide to the office the name, address and
16 telephone number of the guardian, conservator,
17 attorney-in-fact, legal representative or next-of-kin of any
18 patient, resident or client and a copy of any document
19 granting legal decision-making power over a resident.

20 D. The long-term care facility and personnel who
21 disclose records pursuant to this section shall not be
22 liable for the disclosure.

23 E. In order to carry out its responsibilities as
24 a health oversight agency, the office shall establish
25 procedures to protect the confidentiality of records

1 obtained pursuant to this section and in accordance with the
2 federal Health Insurance Portability and Accountability Act
3 of 1996 regulations."

4 Section 2. Section 28-17-14 NMSA 1978 (being Laws
5 1989, Chapter 208, Section 14, as amended) is amended to
6 read:

7 "28-17-14. CONFIDENTIALITY OF INFORMATION. --

8 A. The files and records of the office may be
9 disclosed only for purposes of fulfilling the duties of the
10 office pursuant to Subsection C of Section 28-17-4 NMSA 1978
11 at the discretion of the state ombudsman or the state
12 ombudsman's designee. All state ombudsman files and records
13 pertaining to clients, patients and residents are
14 confidential and not subject to the provisions of the
15 Inspection of Public Records Act. The state ombudsman shall
16 not disclose the identity of any complainant, resident,
17 client or patient about whom the office maintains files or
18 records unless:

19 (1) the complainant, resident, client or
20 patient or the legal representative of that person consents
21 in writing to the disclosure;

22 (2) the complainant, resident, client or
23 patient gives oral consent that is documented immediately in
24 writing by a representative of the office;

25 (3) disclosure is necessary for the

1 provision of ombudsman services to the patient, resident or
2 client and the patient, resident or client is unable to
3 express written or oral consent; or

4 (4) disclosure is ordered by the court.

5 B. The director shall have access to the records
6 and files of the office to verify the effectiveness and
7 quality of the program where the identity of any
8 complainant, witness, patient, resident or client is not
9 disclosed. " _____

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